

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.323 OF 2017
IN
CRIMINAL WRIT PETITION NO. 650 OF 2017**

Nisha Ramesh Jadhav

..Applicant

Vs.

Imran Anwar Kazi & Ors

..Respondents

Mr. A. A. Gore for the Applicant

Ms Pragati Shirke for the Respondent No.1

Mrs. P. P. Shinde for the Respondent State

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ**

DATE : 10th JULY, 2018

P.C.

1 The above Application has been filed in the above Writ Petition which has been disposed of by order dated 20-6-2017 passed by a Division Bench of this Court, comprising of the Hon'ble Acting Chief Justice V. K. Tahilramani and the Hon'ble Sandeep K Shinde J. By the said order, the Petition came to be allowed and resultantly the notification of the appointment of the Special Public Prosecutor came to be set aside. The notification in question came to be set aside on the ground that there is a conflict of interest in so far as the person who was appointed as the Special Public Prosecutor is concerned.

2 The above Application has been filed for initiating action against the Respondent No.1 herein who is the original Petitioner under Section 340 of the Cr.P.C. and also to take suo motto action of contempt against the Petitioner.

The above Application is founded on the averments which were appearing in paragraphs 7 and 8 of the above Writ Petition excerpts of which have been extracted in paragraphs 3 and 4 of the above Civil Application. The Applicant seeks to buttress his case for action taken against the original Petitioner under Section 340 of the CrPC by juxtaposing the averments made in the paragraphs 7 and 8 as extracted with the contents of the FIR.

3 In our view, the basis of making the allegations as found in the above Criminal Application are misfounded. This is not a case where one can say that the facts which are appearing in the FIR can be said to be the undisputed facts so as to entitle the Petitioners to make allegations which come within the ambit of Section 340 of the CrPC. It is required to be noted that the charge sheet has been filed however the trial is yet to commence wherein the veracity of the allegations made in the FIR would be gone into hence there is no warrant to initiate proceeding under Section 340 of the CrPC.

4 The contempt against the Respondent No.1 is alleged on the ground that certain orders passed by this court were suppressed from the Trial Court by the Respondent No.1. There is no foundation laid as to the alleged breach or violation or the willful disobedience of any order passed by this Court.

5 In our view, therefore the said ground to say the least is preposterous, hence no case for initiating the contempt proceedings against the Respondent No.1 are made out. The above Criminal Application is accordingly rejected.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]